IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION (ST) NO.23689 OF 2004

Smt. Kanchan Anandrao Kumbhar ... Petitioner

Vs.

Smt. Kusum Anandrao Kumbhar & Ors. ... Respondents

Mr. S.R. Ganbawale for the petitioner.

Mr. B.K. Raje for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 25TH APRIL, 2005.

P.C.:-

1. In this civil revision application, order dated 13/11/2003 passed by the Civil Judge, Senior Division, Islampur in Misc. Application No.7 of 2002, is under challenge. The petitioner is the original applicant. Respondent 1 is the first wife of deceased Anandrao Kumbhar. Respondent 5 is the second wife of deceased Anandrao Kumbhar. Respondents 2, 3 and 4 are the children of deceased Anandrao Kumbhar and respondent 5 - Smt. Jayashri Andndrao Kumbar. Respondent 6 - Smt. Sonabai Dhondiba Kumbhar is the mother of deceased Anandrao Kumbhar. Respondent 7 is the daughter of deceased Anandrao Kumbhar and respondent 1 - Kusum Anandrao Kumbhar.

2. Respondents 1 to 6 had filed a petition under section

372 of the Indian Succession Act in the Court of Civil Judge, Senior Division, Islampur, claiming to be the heirs of deceased Anandrao and praying for succession certificate. The said petition was decided on 18/10/2001 and a succession certificate was issued in favour of respondents 1 to 4 and 6.

3. The petitioner's case is that she is the legally wedded wife of deceased Anandrao. Her marriage with him was solemnised on 14/7/1975 as per customary rites at Datta temple at Village Wathar farf Vadagaon, Tal. Hatkangale, Dist. Kolhapur. As she was suffering from leucoderma soon after her marriage, deceased Anandrao drove her out. According to her, deceased Anandrao had illicit relations with other ladies and, therefore, she had filed a complaint to the police station. It is her case that after the death of Anandrao, respondents 1 to 6 fraudulently filed an application seeking succession certificate vide Misc. Application No.24 of 2001. They have purposely not impleaded the petitioner as a party to that application. They concealed material facts from the court and obtained succession certificate illegally. According to the petitioner, her name is entered in the revenue record and village panchayat record of landed property of deceased Anandrao as his legal heir. The respondents are very well aware of this and, in fact, they have challenged the mutation entry in R.T.S. Appeal by filing IInd R.T.S. No.2 of 2001 before the Collector. The said appeal is pending. Despite this, respondents 1

to 6 filed the said application for grant of succession certificate without impleading the petitioner as a party with an oblique motive of depriving her of her right over the property of her husband deceased Anandrao. She, therefore, filed Misc. Application No.7 of 2002 for revocation of the said succession certificate. The learned Civil Judge, Senior Division, Islampur, dismissed the application. Being aggrieved by the said judgment and order, this petition is filed.

4. I have heard, at some length, Mr. Ganbawale the learned counsel appearing for the petitioner. He contended that a fraud has been played by respondents 1 to 6 by filing petition under section 372 of the Indian Succession Act without impleading the petitioner, knowing full well that the petitioner is the legally wedded wife of deceased Anandrao. The respondents very well knew that the name of the petitioner is entered in the revenue records. They have filed R.T.S. Appeal No.2 of 2001 before the Collector challenging the said entries. In order to defeat the rights of the petitioner, they have clandestinely filed the petition and obtained an order in their favour. The learned counsel urged that if the petitioner was made a party to the proceedings, she could have brought the correct facts to the notice of the court. He submitted that in the interest of justice, it is necessary that the impugned order be set aside and the matter be remanded to the trial court and the trial court be directed to hear the petitioner.

5. Mr. Raje, the learned counsel appearing for the respondents, however, contended that no interference is necessary with the impugned order. He submitted that assuming that the petitioner is the wife of deceased Anandrao, she is the second wife and as per the provisions of Hindu Law, she has no right to the property of deceased Anandrao and, therefore, the trial court cannot be faulted for having dismissed the petitioner's application. In support of his submission, the learned counsel relied on the judgments of the Karnataka High Court in **Smt. Nimbamma v. Smt. Rathnamma, AIR 1999 Karnataka 226**.

6. The petitioner claims to have got married on 14/7/1975. According to her, she was driven out of the house because she was suffering from leucoderma. The learned counsel for the petitioner submitted that she being the wife of Anandrao, she has a right in his estate and she ought to have been made party to the proceedings. It is contended that material facts have been concealed from the court. The case of respondent 1 is that she was married to deceased Anandrao as per customary rites on 26/6/1967 at Bahadurwadi, Tal. Walwa. In order to establish this, the marriage yadi dated 15/6/1967 has been produced by respondent 1. Admittedly, respondent 7 - Vandana was born to the couple on 29/11/1969. In the year 2002, as per the title of the petition, the said Vandana was 25 years of age. It has also come on record

that there were disputes between respondent 1 and Anandrao and an application being Misc. Application No.150 of 1977, claiming maintenance was filed by respondent 1 before the Judicial Magistrate, First Class, Pune and order of maintenance was passed in her favour on 19/11/1977. It has also come on record that deceased Anandrao had filed a petition being Hindu Marriage Petition No.10 of 1979 in the Court of Joint Civil Judge, Senior Division at Sangli, on 27/2/1979 for restitution of conjugal rights against respondent 1. This petition was filed under section 9 of the Hindu Marriage Act. In that petition, there was a compromise in the year 1980. Thereafter, respondent 1 and deceased Anandrao were residing together. The said petition and the decree were produced before the lower court. They are at Exs-54 and 55 respectively. In view of this, it is very clear that respondent 1 is the first wife of deceased Anandrao. If that is so, as per section 5 read with section 11 of the Hindu Marriage Act, the marriage between the petitioner and deceased Anandrao would not be a valid marriage and as such she will not have any legal right to the property of deceased Anandrao. This view taken by the trial court cannot be faulted. Reliance placed by Mr. Raje in **Smt. Nimbamma's case (supra)**, is also apt. In that case, the Karnataka High Court has held that when there is no evidence to prove that a person had divorced his first wife prior to relationship with the second woman, the marriage if any, with second woman while the first wife is living and is not divorced, is null, void and nonest.

The status of the second woman in such case is that of a mistress and on the death of the man, she is not entitled to succeed to his properties. Application by such a woman for succession certificate is not maintainable. In view of this legal position, in my opinion, the petitioner cannot even apply for succession certificate. Since, she has no rights, she cannot make any grievance that she should have been impleaded as a party to the proceedings.

7. So far as the grievance of the petitioner that she was not heard is concerned, that must also be rejected. While dealing with her application for revocation of succession certificate, her case has been considered by the court. The petitioner's counsel has argued the petitioner's case extensively. The petitioner examined four witnesses in support of her case. She produced documentary evidence. The respondents examined two witnesses. The respondents also produced documentary evidence. The trial court considered the entire evidence. Heard learned counsel for the parties and then dismissed the petitioner's petition. Thus, it cannot be said that the petitioner's case has not been considered.

8. In my opinion, therefore, there is no substance in this civil revision application and, hence, it is dismissed.

9. At this stage, Mr. Ganbawale, the learned counsel

for the petitioner seeks stay of the impugned order. Mr. Raje, the learned counsel for the respondents objects. In the circumstances of the case, the impugned order is stayed for twelve weeks from today.

10. Connected civil application is also disposed of.

11. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)